

SUPPLEMENTAL
DEPOSITION OF JEFFREY HARDIN

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

DAVID DAVIS,

 **COPY**

Plaintiff,

vs.

CASE NO. 3:06-CV-0054-VPM

CITY OF PHENIX CITY, ALABAMA,

et al.,

Defendants.

* * * * *

DEPOSITION OF JEFFREY SCOTT HARDIN, taken
pursuant to stipulation and agreement before Shannon
M. Williams, Certified Court Reporter and
Commissioner for the State of Alabama at Large, in
the offices of City Hall, 601 12th Street, Phenix
City, Alabama, on Tuesday, November 6, 2007,
commencing at approximately 12:54 p.m. EST.

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APPEARANCES

FOR THE PLAINTIFF:

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FOR THE DEFENDANTS:

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ALSO PRESENT:

Cole Dugan
David Davis
Wallace Hunter
H.H. Roberts

1 STIPULATIONS

2 It is hereby stipulated and agreed by and
3 between counsel representing the parties that the
4 deposition of JEFFREY SCOTT HARDIN is taken pursuant
5 to the Federal Rules of Civil Procedure and that
6 said deposition may be taken before Shannon M.
7 Williams, Certified Court Reporter and Commissioner
8 for the State of Alabama at Large, without the
9 formality of a commission; that objections to
10 questions other than objections as to the form of
11 the questions need not be made at this time but may
12 be reserved for a ruling at such time as the
13 deposition may be offered in evidence or used for
14 any other purpose as provided for by the Federal
15 Rules of Civil Procedure.

16 It is further stipulated and agreed by and
17 between counsel representing the parties in this
18 case that said deposition may be introduced at the
19 trial of this case or used in any manner by either
20 party hereto provided for by the Federal Rules of
21 Civil Procedure.

22 * * * * *

1 JEFFREY SCOTT HARDIN

2 The witness, having first been duly sworn
3 or affirmed to speak the truth, the whole truth and
4 nothing but the truth, testified as follows:

5 EXAMINATION

6 BY MR. WOODLEY:

7 Q. Mayor Hardin, thank you for coming today,
8 and this is really a continuation of your earlier
9 deposition in this case. Because of various
10 reasons, this case was postponed in August, and so
11 the case is still active. But I appreciate you
12 coming today. And as I think you recall from your
13 last deposition, my name is Tom Woodley. I'm one of
14 the attorneys representing Mr. Davis in this court
15 action against the city and Chief Hunter and City
16 Manager Roberts. You recall that?

17 A. Yes.

18 Q. Once again, the preliminaries. If at any
19 time you don't understand or hear one of my
20 questions, stop me immediately and I'll be more than
21 happy to repeat or rephrase that question. Do you
22 understand that?

23 A. Yes.

24 Q. Let me finish the end of my question before
25 you begin your answer so that this very competent

1 reporter can take down everything that's said in the
2 transcript form. And, of course, you're under oath
3 again, so you're obligated to tell the full truth.
4 Do you understand that?

5 A. Yes.

6 Q. Let me ask you your understanding -- first
7 of all, just so it's clear in my mind, how long have
8 you been the mayor of the city?

9 A. A little over three years now.

10 Q. This is your first term, right?

11 A. As mayor, yes.

12 Q. As mayor?

13 A. Yes.

14 Q. It's a four-year term?

15 A. Correct.

16 Q. I want to ask you your understanding of how
17 citizens would request to address the city council
18 on any subject or issue that may be of interest to
19 the citizen. You correct me if I'm wrong. As I
20 understand it, they have to put in a request to
21 address the council and a written form has to be
22 ahead of the city council meeting, and then they may
23 be given permission to address the city council in a
24 working session; is that right?

25 A. That is correct. And they can actually

1 apply to speak at a work session or the official
2 council meeting.

3 Q. But the normal process is at the work
4 session?

5 A. Well, we prefer -- it's a little more
6 informal and they are not bound to really time
7 restraints if they come to the work session.

8 Q. Right. During your tenure as the mayor of
9 the city, do you recall any city employees
10 requesting and receiving permission to address the
11 city council either in a working session or in a
12 formal public meeting of the council?

13 A. The question is during my term as mayor?

14 Q. Yes.

15 A. I don't recall anyone coming as far as a
16 city employee coming in front of us. Not with --
17 not having filled out an application. It was more
18 in line with the discussion that we would be having
19 at the work session at the time. But not an
20 official document that says they want to come and
21 speak to the council in a manner of something
22 besides what was on the agenda.

23 Q. Do you know, during the term that you have
24 been mayor, if any city employee has requested
25 permission to address the council and it's been

1 denied?

2 A. No.

3 Q. So you don't remember any police officer or
4 firefighter asking and actually addressing the city
5 council, either in a work session or a public
6 meeting, involving issues affecting the police or
7 fire department?

8 A. No. I don't know if there was ever -- I
9 know that we have -- as a council where I was the
10 mayor have never denied anyone from coming and
11 speaking to the council.

12 Q. Have you ever asked a firefighter or police
13 officer to come before the city council to address
14 the council members on any issue effecting their
15 departments?

16 A. You're asking in my term as mayor?

17 Q. Yes.

18 A. No.

19 Q. What about prior to the time you were
20 mayor?

21 A. Yes.

22 Q. What was that all about?

23 A. We had some issues with the fire
24 department, and I had a call from a fireman, and I
25 asked him to bring his concerns to the council

1 instead of meeting as a council member.

2 Q. And so before you were mayor, you were a
3 city council member?

4 A. Yes. Well, actually, I was a city council
5 member and I took off a term, and then I ran for
6 mayor. So there was a gap between my serving on the
7 council and serving as mayor.

8 Q. And who was that individual firefighter
9 that you approached?

10 A. Now, I didn't approach him. He approached
11 me. And if I'm not mistaken, it was Randy Doster.

12 Q. What did he approach you about? Do you
13 remember what the subject was?

14 A. There were some concerns going on at the
15 time. I don't remember specifics, but there were
16 some concerns going on at the time about some of the
17 operations within the fire department and some of
18 the leadership going on at that time. And I don't
19 really remember specifics, but I remember that my
20 response to him was to come and address council on
21 those issues instead of bringing them to one council
22 member.

23 Q. Can you remember the approximate year that
24 you were a city council member at the time?

25 A. That term was from '98 to 2001, and so it

1 was within that time frame. I'm not sure of the
2 exact time. But it was three-year terms at that
3 time.

4 Q. His name was Doster?

5 A. Doster. Randy Doster.

6 Q. D-O-S-T-E-R?

7 A. Correct.

8 Q. Do you know if Mr. Doster was a local union
9 officer of the firefighters' union?

10 A. I don't know if he was a member at all. I
11 don't know the answer to that question.

12 Q. And you don't recall the issue or issues of
13 concern that were on his mind at the time?

14 A. I don't remember. There were some issues
15 within the fire department that were going on at
16 that time, and those issues were -- a lot of those
17 issues were coming through the media. And he wanted
18 to discuss some of those things, and that's when I
19 asked him to come in front of council.

20 Q. I might be able to refresh your
21 recollection. Could it have dealt with staffing
22 within the fire department?

23 A. I don't remember the specific issues.

24 Q. Could it have dealt with employee morale?

25 A. I don't know. Obviously, there was some

1 morale issues because we would read about them in
2 the paper. But I don't remember the specifics that
3 he had.

4 Q. And did Mr. Doster, in fact, address the
5 city council?

6 A. I don't think he did. I don't think he
7 ever came and made a formal presentation in front of
8 the council.

9 Q. But you invited him to appear?

10 A. I did.

11 Q. Do you know whether or not Mr. Doster
12 exhausted the chain of command or any grievance
13 procedures before he was contemplating responding to
14 your request to appear before the council?

15 A. I don't know that. I don't know if he did
16 or did not.

17 Q. At that time, do you know whether or not it
18 was a requirement that firefighters would have to
19 exhaust the chain of command before they would be
20 allowed to appear and address the city council?

21 A. I don't know. That's more in the
22 day-to-day operations. I don't know that.

23 Q. Let me invite your attention back to the
24 period of April 2006 when, again, you testified
25 earlier in your deposition about Mr. Davis

1 contacting you by telephone about a proposed
2 ordinance. After that conversation on the phone
3 with Mr. Davis, it apparently came to your attention
4 that he was terminated from his job with the fire
5 department; is that correct?

6 A. Correct.

7 Q. And what was your initial reaction to
8 that? Were you surprised? Were you disappointed?
9 Concerned that he was terminated for talking to you?

10 A. I was surprised.

11 Q. And why do you say you were surprised?
12 What was on your mind?

13 A. Well, as I testified earlier, I didn't find
14 out until maybe a week or so after that it
15 happened -- and this is a small town, so you
16 normally hear stuff like that. And I was just a bit
17 surprised that he had been terminated and I had not
18 heard about it prior to hearing about it.

19 Q. Did you take any action or have any
20 conversations, for example, with Chief Hunter or
21 Mr. Roberts trying to intervene on behalf of
22 Mr. Davis and perhaps ask for a reconsideration and
23 reinstatement of Davis back into his job?

24 A. No.

25 Q. You didn't make any efforts in that regard?

1 A. No.

2 Q. Did you have conversations with Mr. Roberts
3 about the subject of the firing of Davis?

4 A. I did. I just wanted to confirm it with
5 him.

6 Q. And what did he say to you? Do you
7 remember?

8 A. He said yes -- he confirmed that he had
9 been terminated.

10 Q. Did he say why?

11 A. He didn't go into a lot of detail, but
12 basically led me to believe that there were several
13 things that led up to the dismissal and -- but it
14 was -- there's a fine line between, you know, being
15 curious and stepping over the boundaries of the city
16 charter, so I try to adhere to that line. So it --
17 it became more of a personnel issue, and so that's
18 at the point where I kind of backed off and just
19 asked the question just for confirmation.

20 Q. You didn't ask for any further
21 consideration on the part of the chief or
22 Mr. Roberts concerning Davis?

23 A. No.

24 Q. Was it your understanding at the time that
25 the triggering event for the discharge of Davis was

1 his telephone contact with you?

2 A. That's what I had heard, yes.

3 Q. Is that your understanding today?

4 A. That's what I have heard, yes.

5 Q. Bear with me for a second.

6 A. Sure.

7 Q. Since Mr. Davis's termination in April
8 2006, roughly a year and a half ago, have you had
9 any individual conversations with city employees
10 about any subject?

11 A. Not about -- obviously, I speak to city
12 employees, but not about individual working
13 conditions or things like that. It's more if I have
14 a question concerning a project like the project on
15 Broad Street out here, if I run into the city
16 engineer, I'll ask him about it. Maybe ask him
17 about the timeline or something like that, or
18 timeline on other projects in the city.

19 Or if I run into individuals on the street, if
20 I have a question about particular things, I may ask
21 those, but not -- try to veer away from work-related
22 issues.

23 Q. As I understand it, some of the police
24 officers working for the City of Phenix City have a
25 union called the FOP, Fraternal Order of Police.

1 Are you aware of that?

2 A. I knew years ago that there was an active
3 FOP. And I don't know if it qualifies as a union or
4 not, but I knew that -- because I used to know where
5 the building was where they met, because it was
6 nextdoor to a friend of mine's house. But I don't
7 know if they're still active or not.

8 Q. Do you recall any conversations you may
9 have had with FOP representatives about police
10 department issues?

11 A. No.

12 Q. When you were running for mayor and then
13 you were elected as mayor, did you seek and request
14 the support of the firefighters' union endorsing your
15 candidacy as mayor?

16 A. No.

17 Q. Did you have any conversations with any
18 firefighters or firefighter union reps about
19 supporting your candidacy?

20 A. I had a gentleman at the time that I think
21 he was the president of the firefighters'
22 association that came and said that he wanted to
23 support me, and he did that. And at the time, there
24 was a pending case that -- where he had sued the
25 city. And I made it very clear to him that his

1 support in no way would bear on my thinking on the
2 case as far as settling the case or anything like
3 that. So I made it very clear to him that I would
4 not make a deal for his support but obviously would
5 appreciate any support, you know, that I could get.

6 Q. Was his name Dennis Duty?

7 A. Yes. Yes.

8 Q. And did he indicate that the firefighters'
9 union would, in fact, support your candidacy as
10 mayor?

11 A. He indicated that I would get some support
12 for mayor and that he'd -- himself and some others
13 that would support me -- put out signs on my behalf,
14 provide some signage for me and so forth.

15 Q. And did that happen?

16 A. Yes.

17 Q. And did Mr. Duty, on behalf of his fellow
18 union members and firefighters, mention any issues
19 or concerns they had that were going on in the fire
20 department and that they wanted you, as the new
21 mayor, to assist on those issues?

22 A. I don't remember any specific issues that
23 he brought up. It was more about supporting my
24 campaign.

25 Q. Was he then a city employee of the fire

1 department when he supported your campaign?

2 A. I don't believe he was, because I know that
3 there was a pending lawsuit. I don't believe that
4 he was. So I'm going to assume that he was not,
5 so -- I don't think he was because there was a
6 lawsuit going on at the time that I think it was
7 over his termination.

8 Q. So what was the year and the months in
9 which you were running for mayor when you may have
10 had this conversation with Mr. Duty?

11 A. Would have started running in 2003. The
12 election was 2004, so typically start --

13 Q. November 2004?

14 A. No, sir. September 2004. But, of course,
15 the campaign would have started somewhere possibly,
16 you know, late or early -- or late the year before
17 that. Late 2003 and early 2004 was when the
18 campaign would have started.

19 But I'm not real sure at what point that he
20 supported me. I don't know what that time --
21 typically, local elections in this area heat up
22 about the first -- well, not really the first of the
23 year, but probably closer to February, March, as it
24 closes in to election time.

25 Q. Did you indicate to Mr. Duty at the time

1 that you welcomed the firefighters and their union
2 support for your candidacy?

3 A. I indicated to him that I welcomed all
4 support.

5 Q. As well as theirs?

6 A. Sure. I think all support is appreciated
7 and needed during a campaign.

8 Q. Looking back on it, do you feel like the
9 firefighters and their union were instrumental or
10 helpful in your election as mayor?

11 A. I think all the support I got was very
12 helpful in my race.

13 Q. That would include the firefighters in the
14 union?

15 A. That's correct.

16 Q. I wanted to go back because it's my
17 understanding that you attended a number of union
18 meetings of the firefighters' union, and I'm sure
19 there were a lot of people that would probably
20 verify that.

21 A. Sure. I don't know what the number is, but
22 I know there were two or three, maybe four.

23 Q. That you went to union meetings?

24 A. Well, I was invited to a restaurant and the
25 firefighters were there, yes, sir.

1 Q. But that was a union meeting of the union
2 brothers and sisters, I guess?

3 A. I would assume so, yes.

4 Q. What was the name of the restaurant?

5 A. I think the only restaurant we ever went to
6 was a Mexican restaurant. I don't remember the
7 name.

8 Q. What's the period of time we're talking
9 about?

10 A. It would have been during the campaign.

11 Q. For mayor?

12 A. For mayor, yes. So somewhere around the --
13 early 2004 leading up to the election.

14 Q. Were you a council member then or were you
15 off the council?

16 A. I was off the council.

17 Q. And beside that one meeting at the
18 restaurant, were there any barbecues or other
19 meetings where union members of the firefighters'
20 union were at ones you went to?

21 A. No.

22 Q. You don't remember?

23 A. I don't recall.

24 Q. You remember several meetings, but the only
25 one you really recall is the one at the restaurant?

1 A. There were, I think, two or three at that
2 restaurant. I know of two. And the one was after I
3 was elected. There was -- there was a retirement
4 party for one of the firefighters that I went to
5 high school with.

6 Q. What was his name?

7 A. Todd Boatner. And he was retiring, so I
8 went to that function.

9 Q. Were you installed as mayor at that time?

10 A. Yes.

11 Q. And on that occasion for the retirement of
12 that individual, did you speak with firefighter and
13 union members about any issues affecting the fire
14 department?

15 A. I don't remember if any issues were brought
16 up. I think it was just a retirement party.

17 Q. But you were aware that there were concerns
18 among the firefighters within the fire department
19 about morale and staffing and swap time and trading
20 shifts and shift schedules?

21 A. Yes.

22 Q. But you don't recall any of the
23 firefighters raising those points with you
24 outside --

25 A. I don't know at that meeting that any of

1 that stuff was brought up. I know that -- I know
2 that there were some rumblings early on -- I think
3 the time or two before the election where some
4 issues were brought up, and some of those -- we were
5 kind of brought there as candidates before the
6 election. It was myself and other candidates. I
7 don't remember the number of candidates that were
8 there. And we were asked to answer questions and
9 make comments about our campaign and our agenda.

10 And I know at, at least one of those meetings,
11 there were some complaints and rumblings. But for
12 the most part, those were kind of kept under wraps
13 because there were people there leading the meeting
14 that said, well, we don't want to get into all that
15 stuff; we want to know about the candidates and
16 their platforms.

17 Q. Know about the candidates and their
18 platforms on what they're going to do concerning
19 issues in the fire department, I would assume,
20 correct?

21 A. I don't remember any specifics being
22 brought out at those meetings.

23 Q. You can turn to Exhibit 14, if you would,
24 Mayor Hardin. This is the newspaper article which
25 caused a stir back in September of 2005 in which

1 Mr. Davis and a number of other union members were
2 interviewed for this newspaper article and were
3 quoted about concerns the firefighters had regarding
4 staffing and employee morale and fears of
5 retaliation for addressing these issues and speaking
6 to the newspaper reporter. Again, I take it you
7 were aware of this newspaper article when it came
8 out?

9 A. Yes.

10 Q. When you first read this article, I take it
11 you became aware of the concerns that a number of
12 the firefighters and union representatives had about
13 the fire department, right?

14 A. Yes.

15 Q. Did you do anything on your own then? You
16 were mayor then, right?

17 A. Yes.

18 Q. Did you do anything to have a meeting or
19 conversation with either Chief Hunter or City
20 Manager Roberts about these problems or issues that
21 were being addressed by the firefighter union
22 members?

23 A. The only meeting that I recall was before
24 City Manager Roberts got back from his duty -- his
25 military duty and before Chief Hunter was named

1 chief. And it was when Jerry Prather and the
2 interim city manager at that time -- I was called
3 into a meeting that those two guys were having. And
4 was asked by the interim city manager to sit down
5 and talk about some issues with the fire department.

6 Q. What were those issues?

7 A. I didn't get involved in what the specific
8 issues were. I just -- first, I didn't think that I
9 needed to be in there speaking to the fire chief
10 over day-to-day operations issues. But my question
11 to the chief was, do you realize that you have
12 problems within your department, yes or no? And if
13 you do, do you have a plan to fix those?

14 And he answered yes on both of those
15 questions. We realize we have problems and, yes, we
16 have a plan to fix those. And I was satisfied that
17 he did -- he did realize that there were some issues
18 and that he had a plan to fix it. And that's pretty
19 well -- defines --

20 Q. How long were you at that meeting?

21 A. Ten to 15 minutes.

22 Q. And what caused you to be at the meeting?
23 Did somebody invite you or did you invite yourself?

24 A. I was walking by and the interim city
25 manager asked me to come in and invited me into the

1 meeting.

2 Q. Was Mr. Davis at the meeting?

3 A. No.

4 Q. Who, from the firefighters' union, was
5 there?

6 A. No one. It was just the fire chief and
7 interim city manager and myself.

8 MR. WOODLEY: I don't have any further
9 questions. Thank you, Mr. Mayor.

10 MR. MCKOON: We are through then.

11 (The deposition concluded at 1:15 p.m.)

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